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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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313 U.S. #3
BUTTARS

No. 892

THOMAS J. BUTTARS, Sr.,
Petitioner,

vs.

UTAH MORTGAGE LOAN CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND SUPPORTING BRIEF.

J. D. Skeen,
E. J. Skeen,
Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI.

The petition of Thomas J. Buttars respectfully shows to the court:

That on August 4, 1938, Utah Mortgage Loan Corporation instituted foreclosure proceedings against your petitioner. Judgment was entered on December 24, 1939, and on January 30, 1939 the property was sold under foreclosure. The period of redemption under the Utah Law would have expired on July 30, 1939. On July 13, 1939, the debtor filed his petition in the District Court of the United States for the District of Utah, praying for relief under Section 75 of the Bankruptcy Act, together with schedules "A" showing secured debts aggregating $1359.24, and unsecured debts aggregating $893.00, and schedule "B" show-

ing four tracts of real estate of the aggregate value of $12110.00 (R. 5-6).

On July 27, 1939, the Utah Mortgage Loan Corporation filed a petition praying that the debtor be denied any relief and that the proceeding be dismissed insofar as it involved land on which the petitioner had a mortgage lien. An order to show cause was issued (R. 6).

The Home Owners' Loan Corporation filed a petition praying for authority to proceed to foreclose its mortgage on a part of the land. The matter was referred to the conciliation commissioner who reported a meeting of creditors at which it was ordered that the debtor hold certain grain which had then been harvested (R. 9).

On October 9, 1939, the court made an order to the effect that the court retain jurisdiction over the property of the debtor subject to the mortgage to the Utah Mortgage Loan Corporation, for a period of 60 days from the 26th day of August, 1939 and during such period that the debtor "is hereby authorized to repurchase from the Utah Mortgage Loan Company, said real property hereinabove described, for the total sum of $5574.25" and further, "that in the event of the failure of the said debtor to pay to said Clerk said total amount within said sixty-day period, and then, in that event, it is hereby ORDERED, ADJUDGED AND DECREED that said property hereinabove described is hereby released and discharged from the jurisdiction of this court and the sheriff of Cache County, State of Utah is hereby authorized and directed to issue to the Utah Mortgage Loan Company his sheriff's deed to the premises hereinabove described and each and every part thereof" (R. 10).

The district court made an order authorizing the debtor to sell 2000 bushels of wheat, to pay to the Home Owners' Loan Corporation $485.00, to pay harvesting expenses of $225.00, and attorneys' fees of $50.00, and on October 28, 1939, the matter was continued to November 4, 1939. No-

vember 7, 1939, the court authorized the debtor to pay the additional sum of $160.80 to the Home Owners' Loan Corporation and the matter was continued to November 25, 1939. The debtor made an offer of composition and extension, and subsequently made an amended offer. On November 27, 1939, the offers having been rejected, he filed an amended petition for adjudication under sub-section (s) of Section 75 of the Act. The petition was verified October 13, 1939. The matter was thereupon referred to the conciliation commissioner for further proceedings under subsection (s). An inventory and appraisement was made and filed. The conciliation commissioner set aside exemptions of real and personal property and fixed the rental at $525.00 a year. The report was filed February 8, 1940 and on the same day the court made an order staying proceedings against the debtor for a period of three years from said date.

On March 26, 1940, the Utah Mortgage Loan Corporation filed a petition for an order striking from the inventory and appraisement all of the real estate upon which it held a mortgage, the order fixing the rentals and adjudging the debtor to have no interest in the property, and on the same day an order to show cause was issued. Upon hearing of the order, the court ordered:

> "1. That upon the 27th day of November, 1939, the day upon which the said debtor filed his petition to obtain the benefits of Section 75 (s) of said bankruptcy law as amended, the period of redemption of the property hereinafter described from said sheriff's sale had expired and the said debtor's rights of redemption had been extinguished and the said Utah Mortgage Loan Corporation was the owner and entitled to the exclusive possession of said real property and each and every part thereof.
>
> 2. That this court has no jurisdiction over the property hereinafter described or any part thereof by reason of any of the proceedings taken by the debtor herein

either under said Section 75 (s) or at all and the property hereinafter described and the descriptions thereof are hereby ordered to be and the same are hereby stricken from said debtor's schedules.

3. That that part of the petition of Utah Mortgage Loan Corporation praying that the adjudication in bankruptcy of said debtor be set aside and all proceedings taken therein be vacated and dismissed, is hereby denied.

4. That the real property hereinabove referred to and affected by this order is located in Cache County, State of Utah, and is particularly described as follows, to-wit: (a description of the real estate stricken).

By order of the Court made the 8th day of April, 1940.

Tillman D. Johnson, Judge."

From this order an appeal was taken and on December 27, 1940, the Circuit Court of Appeals of the Tenth Circuit affirmed the judgment of the district court holding:

(1) That the report of the conciliation commissioner respecting the grain was not such a report as is required by the Bankruptcy Act to authorize the court to permit proceedings against the debtor outside of the Bankruptcy Court; and further:

"(2) Where the Bankruptcy court had jurisdiction of the parties and subject matter, its order conditionally authorizing the issuance of a sheriff's deed to the debtor's mortgaged property sold on foreclosure in the state court, though erroneous, was not void, and could not be challenged collaterally on appeal from a subsequent order holding that the redemption period had expired and declining jurisdiction over the property on a petition for appraisal and fixing of rental value.

(3) The bankruptcy court's order giving the debtor 60 days to repurchase mortgaged property sold on foreclosure in the State court became binding on the

debtor when he took no appeal therefrom, and when he failed to comply therewith his right to redeem expired with the end of the 60-day period.

(4) Where only 16 days remained to redeem mortgaged property foreclosed in the State court when the debtor, on July 13, filed his petition under subsections of the Bankruptcy Act relating to negotiations for composition and settlement of debts, an amended petition filed November 27 under another subsection requiring appraisal of the property and fixing of rental value was filed after the remaining period of redemption had expired, and hence the property was properly stricken from the bankruptcy proceedings, where the petition of November 27 was verified as of October 13, and alleged that on October 13, negotiations had failed, thereby terminating on that date the automatic stay provided by the statute."

Section 75 (n) of the Bankruptcy Act provides that the filing of a petition with the clerk shall subject the farmer and his property, wherever, located, for all the purposes of the Act, to the exclusive jurisdiction of the Court and further,

"The right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition." And further:

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

Proceedings looking to a composition and/or extension in the district court did not terminate until November 25, 1939. The 26th of November was Sunday and the petition was filed Monday. By striking the debtor's real estate from the schedule, he was denied all rights under subsection (s) of Section 75.

This petition presents the following questions:

1. Has the district court any discretionary power to deny to a farmer debtor the rights afforded by subsection (s) of Section 75 of the Bankruptcy Act, where a petition is properly filed under Section 75 and upon failure to procure a composition and extension agreement, the debtor files an amended petition praying to be adjudged a bankrupt, the court causes the property to be appraised, sets aside exemptions, and fixes the rent and enters a stay order, and where the debtor has not violated any order of the court?"

2. Has the district court the power to limit the time within which a debtor may purchase his property for its full value to 60 days or any other time, and thereby take from him the right to file a petition under subsection (s)?

3. May the court limit the time within which a debtor may, after rejection of an offer of composition and extension, file an amended petition under subsection (s) of Section 75 of the Bankruptcy Act, to the number of days remaining of the period of redemption from a foreclosure sale under the State Law?

4. Is the sentence in Section 75 (n) which reads: "the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section," in any respect limited, qualified, or restricted by the number of days remaining in the period of redemption under the State Law

at the time of the filing of the petition for relief under Section 75 of the Bankruptcy Act?

Certiorari should be granted for the following reasons:

(1) The decision of the Circuit Court of Appeals is contrary to the plain provisions of Section 75 of the Bankruptcy Act.

(2) The decision of the Circuit Court of Appeals is not in accord with the applicable decisions of this Court:

Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 370.
John Hancock Mutual Life Insurance Co. v. *Bartels,* 308 U. S. 180, 84 L. Ed. 176.

(3) The decision of the Circuit Court of Appeals is in conflict with a decision of Circuit Court of Appeals of the Sixth Circuit:

Schirever v. *Oxford Building & Loan Ass'n,* decided January 7, 1941, 116 F. (2d) 683.

(4) The decision of the Circuit Court of Appeals is in conflict with a decision of the Circuit Court of Appeals of the Seventh Circuit:

Kalb v. *Feuerstein,* 116 F. (2d) 775.

(5) The Circuit Court of Appeals has decided an important question of Federal Law which should be finally settled by this Court.

(6) The Circuit Court of Appeals has sanctioned such a departure from the statute and the opinions of this Court, that it is imperative that this Court exercise its power of supervision.

WHEREFORE, petitioners pray that a writ of certiorari to the Circuit Court of Appeals of the Tenth Circuit issue herein.

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